

# SINHA LAW

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March 12, 2018

Via US Mail, Certified

MAR 15 2018

Robert B. Christensen  
President, Agent for Service  
Christy Vault Company, Inc.  
1000 Collins Avenue  
Colma, CA 94014

**Re: 60-Day Notice of Violations and Intent to File Suit ("Notice") Under the Federal Water Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Christy Vault Company, Incorporated – Colma Facility:

I am writing on behalf of the California Environmental Protection Association ("CEPA") to give legal notice that CEPA intends to file a civil action against Christy Vault Company, Inc. ("Discharger") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that CEPA believes are occurring at the Christy Vault Company facility located at 1000 Collins Avenue in Colma, California ("the Facility" or "the site").

CEPA is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CEPA intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

## **I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED**

CEPA's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "General Permit").

Information available to CEPA, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTs") indicates that on or around June 17, 1993, the Discharger submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility under the 1992 Permit. On or around August 11, 2015, the Discharger submitted an NOI to be authorized to discharge storm water from the Facility under the 2015 Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 2 411007251.

As more fully described in Section III, below, CEPA alleges that in its operations of the Facility, the Discharger has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377; the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

## **II. THE LOCATION OF THE ALLEGED VIOLATIONS**

### **A. The Facility**

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Christy Vault Company's permanent facility address of 1000 Collins Avenue in Colma, California.

The Christy Vault Company – Colma Facility is a Portland Cement concrete precasting plant. Facility operations are covered under Standard Industrial Classification Code (SIC) 3273– Ready-Mix Concrete. The Facility encompasses approximately 3.8 acres, including 142,673 square feet of paved area and 44,144 square feet of buildings.

According to the Facility's current Storm Water Pollution Prevention Plan ("SWPPP"), industrial activities at the Facility include the following: materials storage, fuel storage, aggregate storage, cement processing, equipment parking, equipment fueling, material unloading, truck loading/unloading, vehicle parking, vehicle fueling, vehicle repairs, storage shipping and receiving, and Portland cement concrete manufacturing.

Based on the EPA's Industrial Storm water Fact Sheet for Sector E - Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities, polluted discharges from concrete mixing facilities such as the Facility contain pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, and arsenic; chemical oxygen demand ("COD"); biochemical oxygen demand ("BOD"); total suspended solids ("TSS"); benzene; gasoline and diesel fuels; fuel additives; coolants; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

Information available to CEPA indicates that the Facility's industrial activities and associated materials are exposed to storm water, and that each of the substances listed on the EPA's Industrial Storm Water Fact Sheet is a potential source of pollutants at the Facility.

**B. The Affected Receiving Waters**

The Facility discharges indirectly to Colma Creek, which flows to the San Francisco Bay ("Receiving Waters").

The San Francisco Bay is a water of the United States. The CWA requires that water bodies such as the San Francisco Bay meet water quality objectives that protect specific "beneficial uses." The Regional Water Board has issued the San Francisco Bay *Basin Water Quality Control Plan* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and noncontact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated storm water from the Facility adversely affects the water quality of the San Francisco Bay watershed and threatens the beneficial uses and ecosystem of this watershed.

Furthermore, the San Francisco Bay is listed for water quality impairment on the most recent 303(d)-list for the following: chlordane; dichlorodiphenyltrichloroethane (DDT); dieldrin; dioxin compounds (including 2,3,7,8- tetrachlorodibenzo-pdioxin); furan compounds; invasive species; mercury; polychlorinated biphenyls (PCBs); PCBs (dioxin-like); selenium, and trash.

A water body is impaired pursuant to section 303(d) of the Clean Water Act, 33 U.S.C. §1313(d), when its Beneficial Uses are not being achieved due to the presence of one or more pollutants. Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

### **III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT**

#### **A. Deficient/Invalid SWPPP**

The Discharger's current Storm Water Pollution Prevention Plan ("SWPPP") for the Facility fails to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

- a. The SWPPP is invalid because it was not certified and executed by the Facility's Legally Responsible Person. In fact, the SWPPP was not signed by anyone. Pursuant to Section XII.K of the General Permit, all Permit Registration Documents (PRDs), which includes SWPPPs, must be certified and submitted by a duly authorized Legally Responsible Person;
- b. The SWPPP fails to include an adequate description of Potential Pollutant Sources and narrative assessment of all areas of industrial activity with potential industrial pollutant sources (Section X.G.1 and X.G.2);
- c. The SWPPP fails to include the appropriate sampling parameters for the Facility (Table 1, Section X.I); and
- d. Table 3.2 in Section 3 of the SWPPP (Best Management Practices) fails to contain an adequate description of site-specific BMPs sufficient to comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in the Facility's storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

#### **B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit**

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

(1) Failure to Conduct Visual Observations

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

CEPA alleges that between April 1, 2013, and the present, the Discharger has failed to conduct regular monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

(2) Failure to Collect the Required Number of Storm Water Samples

In addition, CEPA alleges that the Discharger has failed to provide the RWQCB with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system:

- a. One storm water sample analysis for the time period July 1, 2015, through December 31, 2015 (one sample was collected on 11/9/15). QSEs occurred in the vicinity of the Facility on at least the following relevant dates: 11/02/15, 11/9/15, 11/15/15, 11/24/15, 12/03/15, 12/10/15, 12/13/15, 12/18/15, 12/20/15, 12/24/15, and 12/28/15;
- b. Two storm water sample analyses for the time period January 1, 2016, through June 30, 2016. QSEs occurred in the vicinity of the Facility on at least the following relevant dates: 01/05/16, 01/13/16, 01/15/16, 01/19/16, 01/22/16, 02/02/16, 02/17/16, 03/05/16, 03/10/16 and 03/20/16; and
- c. Two storm water sample analyses for the time period July 1, 2017, through December 31, 2017. QSEs occurred in the vicinity of the Facility on the following relevant dates: 10/19/17, 11/04/17, 11/08/17, 11/16/16, and 11/26/17.

Further, the Discharger has not applied for or received a No Exposure Certification (NEC) for the facility, pursuant to Section XVII of the General Permit.

In addition, the Discharger has not applied for or received an exemption from sampling for Dischargers claiming “No Discharge” through the Notice of Non-Applicability (NONA) provisions contained in Section XX.C of the General Permit.

**(3) Failure to Provide Storm Water Run-Off Samples during Qualified Storm Events**

Pursuant to Section XI.B.1 of the General Permit, a Qualified Storm Event (QSE) is a precipitation event that both produces a discharge for at least one drainage area and is preceded by 48 hours with no discharge from any drainage area.

The Discharger’s samples collected during fiscal year 2016-17 listed below are not in compliance with the General Permit because they were not collected during Qualified Storm Events as defined by the General Permit:

<b>Sample Date</b>	<b>QSE Info</b>
10/14/16	Not a valid QSE – no rainfall on this or prior day
02/07/17	Not a valid QSE – third consecutive day of rainfall
04/17/17	Not a valid QSE – second consecutive day of rainfall

**(4) Failure to Deliver Samples to the Laboratory within 48 Hours of Collection**

Pursuant to Attachment H, Section 2 of the General Permit, Dischargers are to deliver storm water run-off samples to a qualified Laboratory within 48 hours of the physical sampling.

The Discharger's samples listed below were not delivered to the Facility's Laboratory TestAmerica in that time frame:

<b>Sample Date/Time</b>	<b>Date/Time Laboratory Received Sample</b>
10/14/16, 11:25	10/17/16, 18:30
04/17/17, 16:17	04/19/17, 17:00

(5) Failure to Upload Storm Water Sample Analyses within 30 Days

Section XI.B.11.a of the General Permit requires Dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event.

The Discharger failed to upload into SMARTS the following sampling and analytical results pursuant to Section XI.B.11.a of the General Permit:

<b>Sample Date</b>	<b>Date of Laboratory Report</b>	<b>Date Uploaded into SMARTS</b>
11/09/15	11/24/15	10/21/16
10/14/16	11/10/16	09/13/17
12/15/16	01/04/17	09/13/17
02/07/17	02/23/17	09/13/17
04/17/17	05/03/17	09/13/17

**C. Falsification of Annual Reports Submitted to the RWOCB**

Section XXI.L of the General Permit provides as follows:

**L. Certification**

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of

my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:

**N. Penalties for Falsification of Reports**

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On October 21, 2016, the Discharger submitted its Annual Report for the Fiscal Year 2015-16. The Report was signed under penalty of law by Robert Christensen. Mr. Christensen is the currently designated Legally Responsible Person ("LRP") for the Facility.

The FY 2015-16 Annual Report included Attachment I as an explanation for why the Discharger failed to sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B. Mr. Christensen certified in the report, under penalty of perjury, that the required number of samples were not collected by the Discharger because **"only 1 QSE [occurred] during working hours."**

The Facility SWPPP lists the Facility's normal operating hours as "0800 to 1630 Monday through Friday." Furthermore, there is evidence that the facility operates 24 hours a day, seven days a week on occasion.

Records from the National Oceanic and Atmospheric Administration (NOAA) website/database confirm that during the fiscal year 2015-16, there were sufficient Qualified Storm Events (QSEs) occurring near the Facility during or within 12 hours of the start of regular business hours to allow the Discharger to collect the requisite number of samples, as delineated above.

Based on the foregoing, it is clear that Mr. Christensen made a false statement in the Facility's 2015-16 Annual Report when he indicated that there were insufficient QSEs during the reporting year.

**D. Failure to File Timely Annual Reports**

The Discharger has failed to comply with Section XVI.A of the General Permit, which provides as follows: “The Discharger shall certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year using the standardized format and checklists in SMARTS.”

The Discharger’s Annual Report for the reporting year 2015-16 was due on or before July 15, 2016. However, the Discharger failed to file the Annual Report until October 6, 2016.

On September 12, 2017, the Regional Water Board issued a First Notice of Non-Compliance to the Discharger for its failure to submit its Annual Report for the reporting period 2016-17, which was due on July 15, 2017. The Discharger did not submit its Annual Report for the fiscal year 2016-17 until October 11, 2017.

**E. Deficient BMP Implementation**

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices (“BMPs”) that comply with the Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

CEPA alleges that the Discharger has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

The Discharger’s failure to develop and/or implement adequate BMPS and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each and every day the Facility discharges storm water without meeting BAT and BCT.

**F. Discharges In Violation of the General Permit**

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to CEPA (including its review of publicly available storm water data, and the Facility's EPA and Basin Plan Benchmark exceedances noted herein) indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

Specifically, dust generating activities occur at the Facility, including the crushing and grinding of concrete and other materials. In addition, vehicle and equipment washing and cleaning occurs at the Facility, and the Facility handles liquid waste. Information available to CEPA indicates that the wash water and/or liquid waste discharge from the Facility as unauthorized non-storm water discharges, due to inadequate BMP development and/or implementation necessary to prevent these discharges.

CEPA alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

CEPA hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

1. Discharges in Excess of Technology-Based Effluent Limitations

The Industrial General Permit includes technology-based effluent limitations, which prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable ("BAT") for toxic pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants. (General Permit, Section X.H.)

The EPA has published Benchmark values set at the maximum pollutant concentration levels present if an industrial facility is employing BAT and BCT, as listed in Table 2, attached to this letter. The General Permit includes "Numeric Action Levels" ("NALs") derived from these Benchmark values; however, the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. (General Permit, Section I.M. (Finding 62)).

The Discharger's exceedances of Benchmark values over the last three (3) years, identified in the table listed below, indicate that it has failed and is failing to employ measures that constitute BAT and BCT, in violation of the requirements of the Industrial General Permit. CEPA alleges and notifies the Discharger that its storm water discharges from the Facility have consistently

contained and continue to contain levels of pollutants that exceed Benchmark values as listed below.

These allegations are based on the Facility's self-reported data submitted to Regional Water Board. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

The Discharger's ongoing discharges of storm water containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that it has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. EPA Benchmarks are relevant to the inquiry as to whether a facility has implemented BMPs. [*Cal. Sportfishing Prot. Alliance v. River City Waste Recyclers, LLC* (E.D.Cal. 2016) 205 F.Supp.3d 1128; *Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 925; *Waterkeepers Northern California v. AG Industrial Mfg. Inc.* (9th Cir. 2004) 375 F.3d 913, 919 (concentration levels in excess of EPA benchmarks are evidence supporting the citizen plaintiff's contention that defendant did not have appropriate BMPs to achieve BAT/BCT).]

The Discharger's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each and every day the Facility discharges storm water without meeting BAT and BCT.

## 2. Discharges in Excess of Receiving Water Limitations

In addition to employing technology based effluent limitations, the Industrial General Permit requires dischargers to comply with Receiving Water Limitations. Receiving Water Limitation found in Section VI(B) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment.

Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment also constitute violations of the General Permit Receiving Water Limitation.

Applicable Water Quality Standards ("WQS") are set forth in the California Toxics Rule ("CTR") and the Regional Basin Plan. Exceedances of WQS are violations of the Industrial General Permit, the CTR, and the Basin Plan. Industrial storm water discharges must strictly comply with WQS, including those criteria listed in the applicable Basin Plan. (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).)

The Basin Plan establishes WQS for the San Francisco Bay and its tributaries, including but not limited to the following:

- Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.
- Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.
- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.

Information available to CEPA indicates that the Facility's storm water discharges contain elevated concentrations of specific pollutants, as listed below. These polluted discharges can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of the General Permit Receiving Water Limitation.

Further, CEPA puts the Discharger on notice that the Receiving Water Limitations are independent requirements that must be complied with, and that carrying out the process triggered by exceedances of the NALs listed at Table 2 of the General Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality-based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of a WQS, or whether it is causing adverse impacts to human health or the environment.

Section XX.B. of the General Permit provides that when a facility's industrial storm water discharges and/or authorized NSWDS are determined to contain pollutants that are in violation of Receiving Water Limitations contained in Section VI, the Discharger must conduct a facility evaluation to identify pollutant source(s) within the facility that are associated with industrial activity and whether the BMPs described in the SWPPP have been properly implemented, assess its current SWPPP and certify via SMARTS any additional BMPs identified which are necessary in order meet the Receiving Water Limitations.

CEPA alleges that from at least November 9, 2015, to the present, the Discharger has been in violation of the Receiving Water Limitations provision of Section VI of the General Permit as evidenced by its exceedances of the applicable Water Quality Standards set forth in the Regional Basin Plan, indicated below.

Further, the Discharger has failed comply with Section XX.B of the General Permit. Failure to comply with the additional Water Quality-Based Corrective Action requirements listed in Section XX.B is an additional violation of the General Permit.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations:

Sample Collection Date	Discharge Point	Parameter	Concentration in Discharge	EPA Benchmark NAL average/instantaneous Value	BASIN PLAN Benchmark value
11/09/15	NE outfall	Iron	11 mg/L	1.0 mg/L	0.30 mg/L
11/09/15	“”	TSS	190 mg/L	100/400 mg/L	N/A
11/09/15	“”	pH	9.19	Below 6 - above 9	Below 6.5, above 8.5
10/14/16	“”	Iron	3.3 mg/L	1.0 mg/L	0.30 mg/L
10/14/16	“”	TSS	170 mg/L	100/400 mg/L	N/A
12/15/16	“”	Iron	1.0 mg/L	1.0 mg/L	0.30 mg/L
02/07/17	“”	Iron	0.59 mg/L	1.0 mg/L	0.30 mg/L
04/17/17	“”	Iron	0.67 mg/L	1.0 mg/L	0.30 mg/L

**G. Failure to Comply with Level 1 Exceedance Response Action Requirements**

As of July 1, 2015, the date the current General Permit became effective, all Dischargers were in “Baseline status” for all parameters listed in Table 2 of the Permit. (General Permit, Section XII(B)).

Pursuant to Section XII(C) of the General Permit, a Discharger’s Baseline status for any given parameter changes to “Level 1 status” if sampling results indicate either an annual average or instantaneous NAL exceedance for that same parameter.

Level 1 status commences on July 1 following the Reporting Year during which the exceedance(s) occurred, and the Discharger enters the Exceedance Response Action (“ERA”) process. The ERA process requires the discharger to conduct a Level 1 ERA Evaluation, with the assistance of a Qualified Industrial Storm Water Practitioner (“QISP”), of the industrial pollutant sources at the Facility that are or may be related to the NAL exceedance(s), by October 1 following commencement of Level 1 status.

The Level 1 ERA Evaluation must include the identification of the corresponding BMPs in the SWPPP, as well as any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of the General Permit.

Based upon the Level 1 ERA Evaluation, the Discharger is required to, as soon as practicable, but no later than January 1 following commencement of Level 1 status, prepare a Level 1 ERA Report. (Section XII(C)(2)). The Level 1 Report must be prepared by a QISP and include a summary of the Level 1 ERA Evaluation, a detailed description of the necessary SWPPP revisions, and any additional BMPs for each parameter that exceeded an NAL.

The SWPPP revisions and additional BMP development and implementation must also be completed by January 1, and the Level 1 status discharger is required to submit via SMARTs the Level 1 ERA Report certifying that the Level 1 ERA Evaluation has been conducted, and necessary SWPPP revisions and BMP implementation has been completed. The certification also requires the QISP’s identification number, name, and contact information (telephone number, e-mail address) no later than January 1 following commencement of Level 1 status.

A Discharger’s Level 1 status for a parameter will return to Baseline status if a Level 1 ERA Report has been completed, all identified additional BMPs have been implemented, and results from four (4) consecutive qualified storm events that were sampled subsequent to BMP implementation indicate no additional NAL exceedances for that parameter. A Discharger will enter Level 2 status if there is an NAL exceedance of the same parameter occurring during the time the discharger is in Level 1 status.

#### Failure to Submit Level 1 ERA Report

Based on the Discharger’s sample analyses summarized above, for Fiscal Year 2015-16, the Discharger had annual average exceedances of Iron and instantaneous exceedances of pH under both the EPA and Basin Plan Benchmark values; as well as annual exceedances of TSS under the EPA Benchmark value. These results elevated the Discharger to Level 1 status for those parameters on July 1, 2016, pursuant to Section XII.C – Exceedance Response Actions of the General Permit.

Furthermore, for Fiscal Year 2016-17, the Discharger continued to have annual average exceedances of Iron under both Benchmarks, which elevated it to Level 2 status for Iron, and continued its Level 1 status for TSS.

Thus, as of July 1, 2016, the Facility technically moved from Baseline Status to Level 1 status for Iron, TSS and pH, as evidenced by its sample analysis dated November 9, 2015. However, due to the fact the Discharger failed to upload the analytical report until nearly one full year later, the SMARTS system failed to calculate the data and elevate the Discharger to Level 1 status.

Pursuant to Section XII(C)(2) of the General Permit, the Facility was required to upload an adequate Level 1 ERA Report on or before January 1, 2017. As of the date of this Notice, CEPA alleges that the Discharger has failed to conduct an adequate Level 1 status evaluation and has also failed to submit a Level 1 ERA report by uploading it into the SMARTS system.

Every day the Discharger conducts operations at the Facility without conducting an adequate Level 1 status evaluation, and/or without submitting an adequate Level 1 ERA Report is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

The Discharger has been in daily and continuous violation of the General Permit's Level 1 status ERA evaluation requirement every day since October 1, 2016. The Discharger has been in daily and continuous violation of the General Permit for failing to submit an adequate Level 1 ERA Report every day since January 1, 2017. These violations are ongoing, and CEPA will include additional violations when information becomes available.

#### **H. Failure to Comply with Facility SWPPP**

Section 4.1.3 of the Facility SWPPP (Sampling Frequency) indicates that: "Samples must be collected four times a year during a Qualified Storm Event (QSE). Two sampling events during QSEs must occur between January 1 and June 30 and two sampling events must occur between July 1 and December 31".

As detailed above, the Facility missed 1 QSE sample for the time period July 1-December 31, 2015; two QSE samples for the time period January 1-June 30, 2016, and two QSE sample for the time period July 1-December 31, 2017, in violation of the Facility's SWPPP.

Section 4.1.3 of the Facility's SWPPP also indicates that samples will be collected during Qualified Storm Events. As detailed in above, the Facility's storm water samples collected on 10/14/16, 2/7/17 and 4/17/17 were not collected during Qualified Storm Events as specified in the Facility's SWPPP, as well as Section XI.B.1 of the General Permit.

Section 4.2.1 of the Facility's SWPPP (Monthly Visual Observations) and Section 4.2.2 (Sampling Visual Observations) indicate that the Facility will conduct Monthly and Sampling Visual Observations in compliance with the General Permit. However, CEPA alleges that the Facility has failed to conduct these observations in accordance with the General Permit.

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, CEPA includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

#### **IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS**

The entities responsible for the alleged violations are Christy Vault Company, Inc, as well as employees of the Discharger responsible for compliance with the CWA.

#### **V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS**

The range of dates covered by this 60-day Notice is from at least April 1, 2013, to the date of this Notice. CEPA may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

#### **VI. CONTACT INFORMATION**

The entity giving this 60-day Notice is the California Environmental Protection Association ("CEPA").

To ensure proper response to this Notice, all communications should be addressed as follows:

*Xhavin Sinha, Attorney for*  
*CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION*  
*1645 Willow Street, #150*  
*San Jose, CA 95125*  
*Telephone: (408) 791-0432*  
*Email: [xsinha@sinha-law.com](mailto:xsinha@sinha-law.com)*

## **VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT**

As discussed herein, the Facility's discharge of pollutants degrades water quality and harms aquatic life in the Receiving Waters. Members of CEPA live, work, and/or recreate near the Receiving Waters. For example, CEPA members use and enjoy the Receiving Waters for fishing, boating, swimming, hiking, biking, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study. The unlawful discharge of pollutants from the Facility impairs each of these uses.

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of CEPA's members have been, are being, and will continue to be adversely affected by the failure of the Discharger and Property Owner to comply with the General Permit and the Clean Water Act.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.

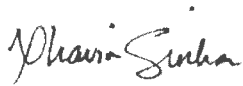
In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), CSPA will seek to recover its litigation costs, including attorneys' and experts' fees.

## **VIII. CONCLUSION**

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger and/or its counsel to contact CEPA's counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations; however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



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Xhavin Sinha  
Attorney for CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

Attachments:

Table 2 of the General Permit - *Parameter NAL Values, Test Methods, and Reporting Units*

**SINHA**  
**LAW**

60-Day Notice of Intent to Sue  
March 12, 2018  
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Copies to:

Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Jeff Sessions, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Executive Director  
San Francisco Bay Regional Water Quality Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

**TABLE 2: Parameter NAL Values, Test Methods, and Reporting Units**

PARAMETER	TEST METHOD	REPORTING UNITS	ANNUAL NAL	INSTANTANEOUS MAXIMUM NAL
pH*	See Section XI.C.2	pH units	N/A	Less than 6.0 Greater than 9.0
Suspended Solids (TSS)*, Total	SM 2540-D	mg/L	100	400
Oil & Grease (O&G)*, Total	EPA 1664A	mg/L	15	25
Zinc, Total (H)	EPA 200.8	mg/L	0.26**	
Copper, Total (H)	EPA 200.8	mg/L	0.0332**	
Cyanide, Total	SM 4500-CN C, D, or E	mg/L	0.022	
Lead, Total (H)	EPA 200.8	mg/L	0.262**	
Chemical Oxygen Demand (COD)	SM 5220C	mg/L	120	
Aluminum, Total	EPA 200.8	mg/L	0.75	
Iron, Total	EPA 200.7	mg/L	1.0	
Nitrate + Nitrite Nitrogen	SM 4500-NO3- E	mg/L as N	0.68	
Total Phosphorus	SM 4500-P B+E	mg/L as P	2.0	
Ammonia (as N)	SM 4500-NH3 B+ C or E	mg/L	2.14	
Magnesium, total	EPA 200.7	mg/L	0.064	
Arsenic, Total (c)	EPA 200.8	mg/L	0.15	
Cadmium, Total (H)	EPA 200.8	mg/L	0.0053**	
Nickel, Total (H)	EPA 200.8	mg/l	1.02**	
Mercury, Total	EPA 245.1	mg/L	0.0014	
Selenium, Total	EPA 200.8	mg/L	0.005	
Silver, Total (H)	EPA 200.8	mg/L	0.0183**	
Biochemical Oxygen Demand (BOD)	SM 5210B	mg/L	30	

SM – Standard Methods for the Examination of Water and Wastewater, 18<sup>th</sup> edition

EPA – U.S. EPA test methods

(H) – Hardness dependent

\* Minimum parameters required by this General Permit

\*\*The NAL is the highest value used by U.S. EPA based on their hardness table in the 2008 MSGP.